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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 11 1992

Federal Communications Commission
Office of the Secretary

In re Application of)

SAMPLE BROADCASTING CO., L.P.)
Eldon, Iowa)

For Construction Permit)

File No. BPH-911010MA

REPLY TO "OPPOSITION TO PETITION TO DENY"

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populations of Eddyville and Eldon are each approximately 1200 persons, whereas that of Ottumwa is approximately 27,000. KKSI-FM places a city-grade contour over Ottumwa; Rivertown's proposed station would do so as well, for Ottumwa is the market center for the region. By contrast, Sample has proposed a transmitter site to the southeast of Eldon, and would not provide city-grade service to Ottumwa.

Rivertown's petition, supported by the affidavit of its president David W. Brown, showed that Mark McVey, Vice-President, Director, and 20% stockholder of O-Town Communications, Inc., licensee of the Eddyville station,² has on several occasions admitted to Brown that the Sample application was conceived of by the O-Town ownership to delay action upon Rivertown's Eldon application; has stated that the Sample transmitter site was chosen by himself at the request of "the Linders" to avoid city-grade contour overlap with KKSI-FM; and has suggested the desirability of rebroadcasting KKSI-FM on the Eldon station, whether the latter is ultimately licensed to Rivertown or Sample.

Based on these facts, Rivertown asked the Commission to set the Sample application for hearing on the following issues:

1. To determine whether the application of Sample Broadcasting was filed for the purpose, in whole or in part, of delaying action upon and grant of the application of Rivertown Communications Company, Inc.
2. To determine whether O-Town Communications, Inc., and/or any of its officers, directors, and stockholders, is

² Mr. McVey is the only locally-resident principal of the Eddyville station: Both Bruce Linder and his father Donald Linder reside in Minnesota.

a real party-in-interest to the application of Sample Broadcasting.

3. To determine the extent of the involvement of Bruce Linder in the planning and development of the application of Sample Broadcasting.

4. To determine the programming intentions of Sample Broadcasting, with particular reference to potential duplication of the programming of Station KKSI-FM.

5. To determine, in light of the evidence adduced under the foregoing issues, whether the application of Sample Broadcasting affirmatively misrepresents material facts, or knowingly conceals material facts.

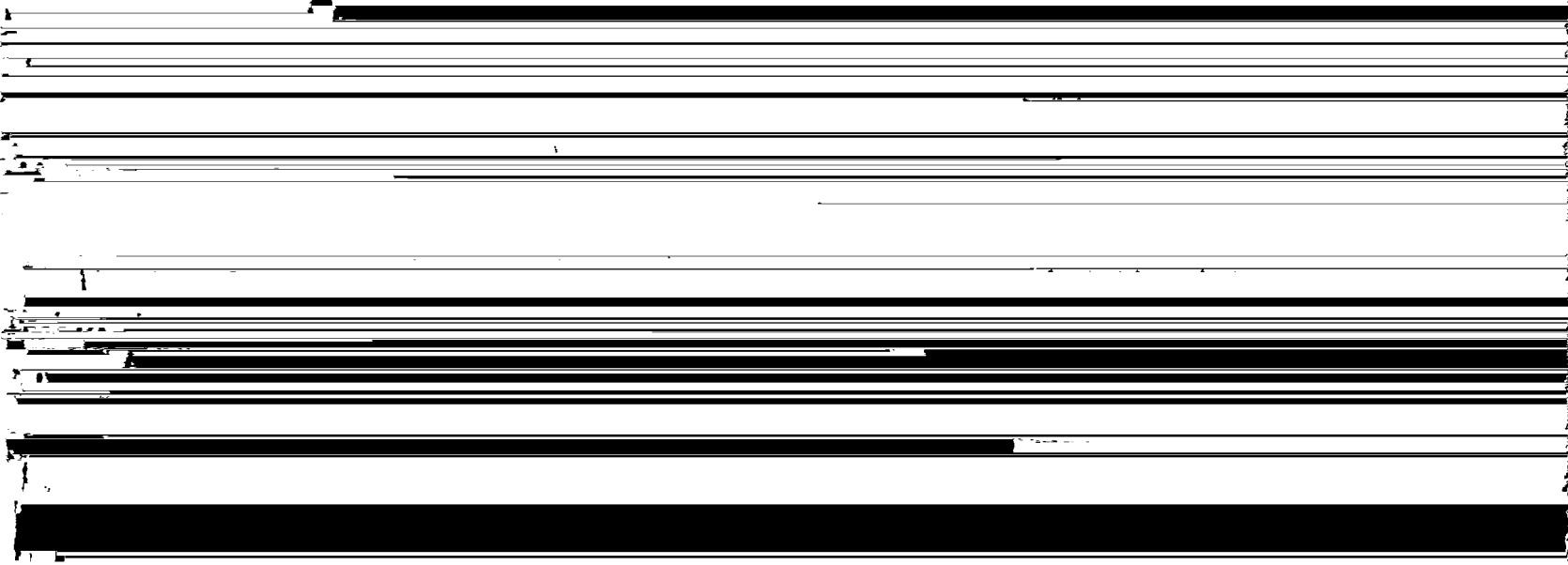
6. To determine, in light of the evidence adduced under the foregoing issues, whether Sample Broadcasting possesses the basic qualifications to be a Commission licensee.

II. Sample's Opposition

Sample's Opposition is both procedural and substantive.

Procedurally, it asserts the inappropriateness of Rivertown's use of the pre-designation "petition to deny" provisions of Section 73.3544 of the Rules, and notes the Commission's preference that issue pleadings be directed to the Administrative Law Judge following designation for hearing.

Substantively, Sample submits statements of McVey. Sample



and (c) that his statements have been "misunderstood" or "misinterpreted."³

III. Rivertown's Reply

Rivertown acknowledges the Commission's preference that "issues" pleadings be filed only after designation for hearing, for action by the designated Administrative Law Judge. However, Section 73.3544 specifically accords a "party in interest" the right to file a pre-designation petition to deny, and Rivertown

With respect to the merits of Rivertown's petition, Mr. McVey's sudden case of amnesia provides no basis for declining to permit the inquiry sought by Rivertown. It is significant that he has carefully avoided denying making the statements attributed to him by Mr. Brown;⁴ in fact, he concedes repeatedly that he may have made such statements, but seeks to avoid any reliance thereon for any purpose with the amazing claim (p. 4) that:

"Nothing I might have said about the Eldon station was based on my own knowledge, or anything anyone else might have said to me. I may have guessed out loud about future possibilities, but anything I might have said was strictly my own guess."

While a hearing upon Rivertown's requested issues may ultimately reveal that Mr. McVey's tale is indeed "full of sound and fury, signifying nothing," he is the Vice President,

~~director and stockholder of the Eldon station, which with~~

hearing, and that O-Town Communications, Inc., be named a party to the hearing.

Respectfully submitted,

RIVERTOWN COMMUNICATIONS COMPANY, INC.

By:


Donald E. Ward

Donald E. Ward, P.C.
1201 Pennsylvania Ave., N.W.
Fourth Floor
P.O. Box 286
Washington, D. C. 20044-0286
(202) 626-6290

May 11, 1992

State of Iowa)
) ss:
County of Jefferson)

AFFIDAVIT OF DAVID W. BROWN

I, David W. Brown, being first duly sworn, do hereby state
as follows:

1. I have reviewed the Statements of Mark McVey and Carmela Sample submitted with the April 29 Opposition of Sample Broadcasting Co., L.P., to the Petition to Deny its application filed by Rivertown Communications Company on April 14, 1992.

2. Although Mr. McVey claims not to remember having made a number of the statements which I attributed to him in my affidavit of April 14, he stops short of denying that he made those statements. In denying any specific knowledge concerning the intentions of Ms. Sample and Mr. Bruce Linder, and claiming that "whatever statements I may have made regarding the Eldon Station were misunderstood or misinterpreted," Mr. McVey appears

is employed, and of whose licensee he is an officer, director, and 20% stockholder. Thus, I believe that it was reasonable of me to assume that his statements were both knowledgeable and an accurate reflection of the intentions of the KKSI ownership vis-a-vis Sample's Eldon application.

4. Turning to the specifics of Mr. McVey's Statement, at the top of page 2, with reference to our June 1991 conversation (described at paragraph 2 of my April 14 affidavit), he claims that he "would not have asked [me] to consider rebroadcasting KKSI-FM," yet the balance of that paragraph is devoted to various ways such a concept "may have" been discussed. My memory is clear that he did ask me to consider rebroadcasting KKSI, and I agree with his statement that this would have represented "a possible opportunity for O-Town Communications," the KKSI licensee.

5. With respect to our discussion of January 18, 1992 (described at paragraph 3 of my April 14 affidavit), his claim (page 2) that such discussion occurred at 3 a.m., which he then uses to bolster his suggestion that I "must have misinterpreted [his] statements, perhaps due to the late hour" (page 3), is simply wrong. Mr. McVey came to the KKMI studios, where I was waiting for him, at about 10 p.m. on the evening of January 18. I showed him the new studio equipment which the owner (John Pritchard) had recently purchased; at approximately 11:15 we went to the KKMI transmitter site (approximately two miles away), where he remained until approximately 1:30 a.m. I stayed at the transmitter site only until about midnight, when I returned to

the studios, in order to feed test signals to the transmitter to assist Mr. McVey in his work. He returned to the studios shortly after 1:30 a.m., returning the modulation monitors to their rack, and setting the levels from the board to the STL. He finished his work and left about 3:30 a.m. Our conversation concerning Eldon, as described in my earlier affidavit, occurred at the KKMI studios prior to our going to the transmitter -- that is, between 10 and 11:15 p.m. -- not at 3 a.m. as he claims. Thus, there is no basis for his attempt to attribute a "misinterpretation" on my part to the "late hour."

6. Mr. McVey claims (page 2) to recall, in this "early morning conversation . . . Mr. Brown stating that he and Mr. Pritchard were interested in purchasing KKSI-FM from O-Town Communications." I made no such statement. A week earlier, on January 11, Mr. McVey had called me, and asked whether Mr. Pritchard or I might be interested in purchasing KKSI: I had responded (on January 11) that I was not personally interested, noting my Eldon application, and that I would inquire of Mr. Pritchard as to his possible interest. On January 18, Mr. McVey asked if I had determined whether Mr. Pritchard was interested in pursuing KKSI; I responded that I had mentioned the subject to Mr. Pritchard, but that he had not indicated to me whether he was interested in buying KKSI or not. There was no mention of "LMAs" during our conversation of January 18, either generally or specifically as to KKSI and an Eldon station, contrary to Mr. McVey's claim.

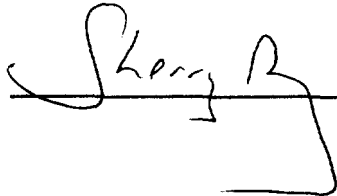
7. With respect to our meeting of March 17, 1992 (which I described at paragraph 4 of my April 14 affidavit, and which Mr. McVey discusses at pages 3 and 4 of his Statement), it is correct that we met at my suggestion. It is not true that I suggested that Mr. McVey sell his interest in KKSI and join with Ms. Sample and myself in a merged Eldon application, as he claims: Since I had never met or spoken with Ms. Sample at that point, there was no basis for me to either consider merging with her, nor to assume that she had an interest in merging with me, much less to propose that Mr. McVey join in such a merged applicant. There simply was no discussion remotely resembling that described by Mr. McVey. The only mention of a possible sale of his interest in KKSI was in the context of a possible purchase of KKSI by Mr. Pritchard (who, since the January meeting discussed above, had actually approached the Linders to determine what they wanted for

that I have met her. I told her at that time that I hoped that she and I could work something out which would avoid the necessity for a hearing on our applications, and the expense which that would involve, but I made no specific suggestion: I did not specifically suggest a merger, as she claims, although that would be an obvious possibility for avoiding the time and expense of a hearing. She asked if I might be interested in working for the Eldon station if she were to be awarded it, and I was non-committal. It is correct that there was no discussion of LMAs or any synergism between KKSI and Eldon during that brief meeting.


David W. Brown

Subscribed and sworn to before me, a Notary Public, this 6th day of May, 1992, by David W. Brown.

(SEAL)



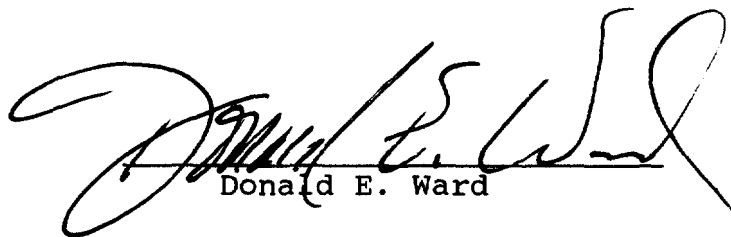
CERTIFICATE OF SERVICE

I, Donald E. Ward, do hereby certify that I have this 11th day of May, 1992, caused to be served by first class United States Mail, postage prepaid, a copy of the foregoing "REPLY TO 'OPPOSITION TO PETITION TO DENY'" to the following individuals:

John S. Neely, Esq.
Miller & Miller
1990 M Street N.W.
Suite 760
Washington, D. C. 20036
Counsel for Sample Broadcasting Co., L.P.

John S. Neely, Esq.
Miller & Miller
1990 M Street N.W.
Suite 760
Washington, D. C. 20036
Counsel for O-Town Communications, Inc.

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street N.W., Room 332
Washington, D.C. 20554



Donald E. Ward